

SIOSI OIL AND GAS COMPANY,
Appellant

v.

ACTING MUSKOGEE AREA DIRECTOR,
BUREAU OF INDIAN AFFAIRS,
Appellee

: Order Affirming Decision
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: Docket No. IBIA 98-117-A
:
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: August 9, 1999

This is an appeal from a June 18, 1998, decision of the Acting Muskogee Area Director, Bureau of Indian Affairs (Area Director; BIA), finding that Oil and Gas Lease 503-7737 (69683), Pauline Pakoska now Billy, Creek NE, had expired for failure to produce oil and/or gas in paying quantities. For the reasons discussed below, the Board affirms the Area Director's decision.

The lease at issue here was approved by BIA on December 5, 1989, for a term of five years "and as much longer thereafter as oil and/or gas is produced in paying quantities." On June 18, 1998, the Area Director sent Appellant a notice of expiration, stating that the last reported production from the lease had occurred in July 1997.

In its notice of appeal, Appellant stated:

The Smith/Billy #1 gas well was shut-in in July 1997 due to the failure of the gas purchaser to comply with our agreement whereby they would change the gas volume meter charts weekly. Our company did not want to be in a position in which gas could have been produced, transported and sold into their system without being properly metered. * * * KOHOK PARTNERS LTD. purchased the system effective November 1, 1997. Since that time KOHOK has been making repairs and reported that they have walked and inspected every foot of this system and found and removed numerous illegal gas taps on their lines taking fee gas. One of the illegal taps was by a homeowner who had a heated swimming pool.

* * * The gas meters are being serviced by KOHOK for the wells operated by [Appellant] and the Smith/Billy #1 is currently producing gas along with the other wells connected to the KOHOK system. * * *

* * * Our company acted in a prudent manner by shutting-in gas wells when the gas volume meter charts were not changed by the prior purchaser. It appears that the new owners have corrected the problems and have made the necessary commitment to insure a continuous operation to assist the gas producers to market the produced gas.

Notice of Appeal at 1-2.

In its Opening Brief, Appellant adds:

As stated in our previous letter, the gas gathering system has changed ownership several times and the current owner, Kohok Properties, Ltd. appear to be acting in a professional manner to get the system running. Due to the high temperatures, they have experienced some down time with their gas compressor.

Opening Brief at 1.

Appellant's notice of appeal indicates that it shut in the well because of concerns that the gas purchaser's metering was inadequate and that gas entering the gas gathering system would therefore not be protected from loss. Kohok's later discovery of illegal taps appears to bear out Appellant's concerns.

The situation Appellant describes is similar in some respects to the situation in Duncan Oil, Inc. v. Acting Navajo Area Director, 20 IBIA 131 (1991), where the lessee had shut in a well in order to avoid an oil spill. The lease in that case imposed duties upon the lessee to prevent waste and to preserve the trust property. The Board held that, if the lessee's decision to shut in the well was made in the reasonable belief that a shut-in was necessary to avoid an oil spill, the lease should not be deemed to have expired.

Paragraph 3(f) of Appellant's lease imposes similar, if not identical, duties upon Appellant. The Area Director has not challenged Appellant's statement as to why it shut in the well in July 1997. The Board therefore finds that Appellant reasonably shut in the well in order to protect the gas from loss and further finds that Appellant was acting in accordance with its obligation under Paragraph 3(f) of its lease.

The fact that the shut-in was reasonable in July 1997 does not necessarily mean, however, that it continued to be reasonable for a year. The Board has held that "an Indian lease does not expire because of a temporary shut-in caused by a mechanical breakdown or accident, as long as the shut-in does not continue beyond the time reasonably necessary to make repairs and resume production." Oxley Petroleum v. Acting Muskogee Area Director, 29 IBIA 169, 170 (1996). The situation in this case, as described by Appellant, is somewhat analogous to the mechanical

breakdown cases in that the problem which caused Appellant to shut in the well could be alleviated by means of repairs, although in this case the necessary repairs were apparently within the control of the gas purchaser rather than Appellant.

Appellant stated in its notice of appeal that it had resumed production but did not state when it had done so. Significantly, however, Appellant does not allege that the Area Director erred in stating, in his June 18, 1998, decision, that no production had occurred since July 1997. The Board must therefore presume that Appellant resumed production sometime between June 18, 1998, and July 15, 1998, the date of Appellant's notice of appeal.

Appellant supplies no information as to when Kohok began repairs, when it completed them, or what a reasonable amount of time for completing the repairs would have been. Although Kohok presumably would not have begun repairs prior to November 1, 1997, when it purchased the gas gathering system, Appellant did not resume production for a period of at least 7-1/2 months after November 1, 1997.

The burden was on Appellant to show error in the Area Director's decision. Oxley, 29 IBIA at 171, and cases cited therein. Appellant was advised of this burden in the notice of docketing for this appeal. In failing to demonstrate that the shut-in did not continue beyond the time reasonably necessary to make repairs and resume production, Appellant has failed to carry its burden of proof.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Area Director's June 18, 1998, decision is affirmed.

Anita Vogt
Administrative Judge

Kathryn A. Lynn
Chief Administrative Judge